THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.2259 of 2006

Date: 06-06-2006

Between :-

Koripathi Sriranga Gopala Rao
..Petitioner

And

The District Collector, West Godavari District
Eluru and two others
..Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.2259 of 2006

ORDER:-

1. Heard Sri S.Laxminarayana Reddy, the learned Counsel representing the petitioner and the learned G.P. for Panchayat Raj.

2. The petitioner – Koripathi Sriranga Gopala Rao filed the present Writ Petition praying for the issuance of a Writ or Order or Direction, more particularly in the nature of Writ of Mandamus declaring the inaction of the respondents 1 and 2 in not taking action against the 3rd respondent to disqualify him from the post of Sarpanch of Pandithavilluru Grampanchayat, Podur Mandal, West Godavari District in view of the fact that he filed I.P.No.24/2005 on the file of Senior Civil Judge's Court, Narsapur, as illegal, arbitrary

and contrary to Section 19(2)(c) of the A.P. Panchayat Raj Act, 1994 and consequently direct respondents 1 and 2 to take immediate action against the third respondent in terms of Section 19 of the aforesaid Act forthwith in pursuance of applications dated 10-10-2005 and 21-12-2005 filed by the petitioner and pass such other suitable orders.

3. Sri Laxminarayana Reddy, the learned Counsel representing the petitioner had taken this Court through the Order passed by the 2nd respondent dated 20-1-2006 under the Right to Information Act 2005 (Act 22 of 2005) and would maintain that the reason recorded that the ground of disqualification to be decided by the District Munsif Court and not by the District Administration cannot be a sustainable reason in the light of the language of Section 22 of the A.P.Panchayat Raj Act, 1994

(hereinafter, in short, referred to as 'Act' for the purpose of convenience). The learned Counsel also would maintain that the fact that I.P. No.24/2005 on the file of Senior Civil Judge's Court, Narsapur, was filed by the 3rd respondent under the provisions of the Provincial Insolvency Act is not in serious controversy for the reason that the petitioner also was shown as one of the respondents – creditors. In the light of the language employed in Section 22 of the Act aforesaid, the reasons recorded by the 2nd respondent are not sustainable reasons. Hence, positive directions may have to be issued to the respondents to follow the procedure specified under Section 22 of the Act. The learned Counsel also placed strong reliance on ***N.TIRUPATAIAH v. DISTRICT PANCHAYAT OFFICER, NELLOR***[1].

4. Per contra, the learned Government Pleader for

Panchayat Raj would contend that in a way in the light of the prayer which had been prayed for in the Writ Petition, the Writ Petition would not survive for the reason that the 2nd respondent already had passed an order and the remedy if any for the petitioner is to question the said order by way of a separate Writ Petition. The learned Counsel also had taken this Court through the clear language employed in Section 19 (2) of the Act and would maintain that in the light of the same, the alleged subsequent disqualification cannot be taken into consideration. The counsel also would maintain that whether the reasons recorded by the 2nd respondent in the order dated 20-1-2006 are sustainable reasons or not, need not be gone into inasmuch as the 2nd respondent had applied his mind and recorded certain reasons. Even otherwise, in the light of the language of Section 22 and

also Section 19(2) of the Act, the relief prayed for in the Writ Petition cannot be granted.

5. Heard the Counsel on record.

6. The Writ Petition was filed praying for the relief which had been already specified supra. The petitioner is an agriculturist and a resident of Panditavilluru village and the 3rd respondent is the present Sarpanch of Pandithavilluru Gram Panchayat. It is stated that the 3rd respondent borrowed an amount of Rs.1,00,000/- from the petitioner and executed four promissory notes in the year 2004. In the year 2005 the petitioner demanded the 3rd respondent to repay the borrowed amount as he had sustained loss in his agriculture. Though the respondent had promised to discharge his debt, he had been postponing the same. It is further stated that the petitioner came to know that the 3rd respondent filed

I.P.No.24/2005 on the file of the Court of Senior Civil Judge, Narsapur, to adjudge him as insolvent and the petitioner was shown as 6th creditor. It is also stated that the 3rd respondent has capacity to discharge the debt but however he had chosen to file the Insolvency Petition in order to defraud the petitioner and the other creditors by suppressing the other properties. It is further stated that though the 3rd respondent had incurred the disqualification under Section 19(2)(c) of the Act, he is continuing as a Sarpanch suppressing the fact of his filing I.P.No.24/2005. Hence, the petitioner filed an application dated 10-10-2005 under Section 6 of the Right to Information Act 2005 (Act 22 of the 2005) to respondents 1 and 2 stating that the 3rd respondent filed I.P.No.24/2005 and as such he is not qualified to be continued as Sarpanch in the light of the provisions

already aforesaid and accordingly to disqualify him. Respondents 1 and 2 had not responded to his application and the petitioner had sent second application on 21-12-2005 to take action against the 3rd respondent. After receiving the second application, the 2nd respondent informed the petitioner through his proceedings L.Dis.No.7258/2005-Ex.A.5 (Pts) dated 20-1-2006 that the disqualification of the 3rd respondent in relation to office of the Sarpanch on the ground that he filed I.P.No.24/2005 to be decided by the District Munsif and not by the District Administration. In the said circumstances, the writ petitioner had invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

7. The order dated 20-1-2006 made by the 2nd respondent under the provisions of the Right to

Information Act 2005 (Act 22 of 2005) reads as hereunder:-

> *"In the reference 1st cited, Sri K.Sri Ranga Gopala Rao has filed an application stating that Sri S.Buli Nandiah Sarpanch, Panditavilluru Gram Panchayat has filed an Insolvency application in I.P.No.24/2005 in the Court of Sri Civil Judge, Narsapur under Section 10, 11 & 13 of the Provincial Insolvency Act and he further requested to disqualify Sri S. Buli Nandiyya from the post of Sarpanch of Panditavilluru Gram Panchayat.*
>
> *In the reference 2nd cited, Sri K.Sri Ranga Gopala Rao has filed another application under Section 6 of the Right to Information Act No.22/2005 stating that to furnish the information regarding the action taken by the District Panchayat Officer on his application in respect of disqualification of Sri S.Buli Nandiyya from the post of Sarpanch of Panditaviluru Gram Panchayat.*
>
> *In this connection, it is informed that the disqualification of Sarpanch on this ground should be decided by the District Munsif Court but not by the District Administration. It is further informed that no action is required on the application submitted by Sri K.Sri Ranga Gopala Rao through the reference 1st cited."*

In ***N.Tirupataiah's case (1st cited)*** the learned Judge of

this Court at paras 9 and 13 observed:-

> *"A plain reading would suggest that the complainant is not given any liberty to move an application to the District Court. Only four categories of persons or agencies, namely, (1) the member, who received the intimation; (b) any other Member; (c) the Panchayat Secretary (executive authority) on a direction of the Gram Panchayat and (d)the Commissioner of Panchayat, are entitled to apply to the District Court for a decision. When the whole exercise is initiated at the instance of a "person" i.e. any resident of Panchayat, can it be said that Le4gislature purportedly intended to deny an opportunity to complainant to approach the District Court when none of the four categories of persons fails to initiate action before the Court? Strict interpretation of the text of the legislation compels one to answer the question in the affirmative but that would render the opportunity given to any person to complain about the disqualification incurred by a Member or Sarpanch, an empty formality if such a person is not given an opportunity to go to the Court and seek a decision as to whether the elected person against whom the complaint is made incurred disqualification or not. In a situation of this nature, the provision calls for purposive interpretation. The principle of purposive interpretation requires the Court to interpret legislative provision in such a manner, which ensures the proper exercise of a right by the person on whom such right is given and in*

consonance with the object with which a provision is enacted.

As the very purpose of enacting Section 22 giving a right to the person to make an allegation in writing would be rendered otiose sub-Section (1) of Section 22 has to be interpreted purposively in the context it appears. Therefore the words "such Member or other Member may … appearing in sub-Section (1) OF Section 22 must be held to include the person who made the complaint against Member, who also has right to move the District Court for a decision."

Section 6 of the Right to Information Act (Act 22 of 2005) deals with ***Request for Obtaining Information*** and the said provision reads as hereunder:-

(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed,to –

(a) the Central Public Information Officer or State Public Information Office, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to public authority requesting for an information,-

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-Section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

8. Act 22 of the 2005 is an Act to provide for setting out

the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. The Right to Information in the context of Article 19 (1) (a) of the Constitution of India had been dealt with in ***People Union for Civil Liberties Vs. Union of India***[2]***.*** The A.P.Panchayat Raj Act 1994 (Act 13 of 1994), is an Act to provide for the constitution of Gram Panchayats, Mandal Parishads and Zilla Parishads and for matters connected therewith or incidental thereto. Section 2 (37) of the aforesaid Act defines "*Sarpanch"* as in this Act, unless the context otherwise requires, 'Sarpanch' means the Sarpanch of a Gram Panchayat

elected under Section 14. Section 8 of the Act dealing with ***Election of Members*** reads as hereunder:-

> *"All members of the gram panchayat shall be elected by the registered voters in the ward by the method of secret ballot and in accordance with such rules as may be made in this behalf."*

Section 14 of the Act dealing with ***Election and term of office of Sarpanch*** reads as hereunder:-

> *(1) There shall be a Sarpanch for every gram panchayat, who shall be elected in the prescribed manner by the persons whose names appear in the electoral roll for the gram panchayat, from among themselves. A person shall not be qualified to stand for election as Sarpanch, unless he is not less than twenty-one years of age:*
>
> *Provided that a Member of the Legislative Assembly of the State or of either House of Parliament who is elected to the office of Sarpanch or Upa- Sarpanch shall cease to hold such office unless within one month from the date of election to such office he ceased to be a Member of the Legislative Assembly of the State or of either House of Parliament by resignation or otherwise.*
>
> *(2) The election of the Sarpanch may be held at the same time and in the same place as the ordinary elections of the members of the gram panchayat.*

(3) Save as otherwise expressly provided in, or presc4ribed under this Act, the term of office of the Sarpanch who is elected at an ordinary election shall be five years from the date appointed by the election authority for the first meeting of the gram panchayat after the ordinary election.

(4) Subject to the provisions of sub-Section (5), any casual vacancy in the office of the Sarpanch shall be filled within one hundred and twenty days from the date of occurrence of such vacancy, by a fresh election under sub-Section (1); and a person elected as Sarpanch in any such vacancy shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

(5) Unless the Commissioner otherwise directs, no casual vacancy in the office of the Sarpanch shall be filled within six months before the date on which the ordinary election of the Sarpanch under sub-Section (1) is due.

(6) The provisions of Sections 18 to 22 shall apply in relation to the office of the Sarpanch as they apply in relation to the office of an elected member of the gram panchayat.

(7) The Sarpanch shall be an ex-officio member of the gram panchayat and shall be entitled to vote at meetings of the gram panchayat.

(8) A person shall be disqualified for election as Sarpanch if he is in appears of any dues, otherwise than in a fiduciary capacity to a Mandal Parishad, or if he is interested in a

substituting contract made with or any work being done for, the Mandal Parishad within whose jurisdiction the gram panchyayat is situated or any other gram panchayat within the jurisdiction of that Mandal Parishad:

Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in, -

i) a company as a mere shareholder but not as a director; or

ii) any lease, sale or purchase of immovable property or any agreement for the same; or

iii) an agreement for the loan of money or any security for the payment of money only; or

iv) any newspaper in which any advertisement relating to the affairs of any of the aforesaid gram panchayat is interested.

Explanation:- *For the removal of doubts it is hereby declared that where a contract is fully performed it shall not be deemed to be subsisting merely on the ground that the Mandal Parishad has not performed its part of the contractual obligation.*

(9) For every gram panchayat one of the members shall be elected to be Upa-Sarpanch by the gram panchayat, in the prescribed manner. If at an election held for the purpose, no Upa- Sarpanch is elected, fresh election shall be held:

Provided that before an election of Upa-

Sarpanch is held every casual vacancy in the office of an elected member of a gram panchayat shall be filled.

(10) A Special meeting for the election of the Upa-Sarpanch shall be called on the same date on which the results of the ordinary elections to the gram panchayat have been published. The notice of the meeting for election of Upa- Sarpanch shall be given to the members so elected by affixture of the same on the notice board at the office of the gram panchayat, immediately after such publication:

Provided that if, for any reason, the election of the Upa- Sarpanch is not h4eld on the date aforesaid the special meeting for the election of the Upa- Sarpanch shall be held on the next day, whether or not it is a holiday observed by the gram panchayat;

Provided further that the Andhra Pradesh Election Commission for Local Bodies may, from time to time, for reasons to be recorded in writing direct or permit the holding of the election of the Upa- Sarpanch on any other day.

In view of sub-Section (6) of Section 14 of the Act, Sections 18 to 22 of the Act apply in relation to the Office of the Sarpanch as they apply to the Office of the Elected Members of the Gram Panchayat. Section 19 of the Act

deals with *D**isqualification of candidates.*** Section 19(2) (c) of the Act specifies that *a person shall be disqualified for being chosen as a member if on the date fixed for scrutiny of nominations for election, or on the date of nomination under sub-Section (2) of Section 16 he is an applicant to be adjudicated an insolvent or an undischarged insolvent.* Section 16 of the Act deals with ***Fresh elections in certain cases*** and Section 16(2) of the Act specifies that *the term of office of a member of a gram panchayat elected under this Section shall expire at the time at which it would have expired if he had been elected at the ordinary or casual election, as the case may be.* Section 22 of the Act dealing with ***Authority to decide questions of disqualifications of members*** reads as hereunder:-

> "*(1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under*

Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those Sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which the office of the gram panchayat is std for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

(3) Where a person ceases to be the Sarpanch or Upa- Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-Section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpancha or Upa-Sarpanch, as the case may be.

In sub-Section (1) the word or expression "***District Court"***

was introduced by Act 22 of 2002. The words "***to be adjudicated an insolvent"*** and the words ***"an undischarged insolvent"*** in Section 19 (2)(c) of the Act and the meaning thereof would assume some importance. It may be also relevant to refer to the relevant provisions of the Provincial Insolvency Act. Section 27 of the Act dealing with ***Order of adjudication;*** Section 28 ***– Effect of an order of adjudication;*** Section 41 ***– Discharge;*** Section 43 – ***Adjudication to be annuled on failure to apply for discharge;*** and Section 44 ***– Effect of order of discharge.*** Statute being a creation of the Legislature, statute or statutory provision to be interpreted in accordance with the intention of the maker. Courts may have to look into the words of the statute to understand the intention of the Legislature. The meaning of the words or expressions already referred to supra need not detain

this Court any longer in the light of the specific language employed in Section 19(2) of the Act. The opening words *"a person shall be disqualified for being chosen as a member if on the date fixed for scrutiny of nominations for election, or on the date of nomination under sub-Section (2) of Section 16"* would assume importance. When the language is clear and unambiguous, the settled principles of statutory interpretation is that the same may have to be given effect to. Certain submissions were made in relation to Section 19(3) of the Act and reliance was placed on ***Elkapalli Latchaiah Vs. Government of Andhra Pradesh***[3]***, and Are Gangadhar Vs. Zilla Parishad, Karimnagar***[4]***.***

9. On a careful analysis of the language of sub-Section (3) when compared with sub-Section (2), there appears to be clear difference. Hence, in the light of the

clear language employed in Section 19(2) of the Act, in particular the opening words of the said provision, though this was not the ground on which an order was made by the 2nd respondent, this Court is of the considered opinion that the writ petitioner is not entitled to the relief prayed for. Hence, the writ petition being devoid of merits, the same shall stand dismissed. No costs.

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Justice

P.S.Narayana

6th June, 2006

Note:- L.R. Copy to be marked (Yes/No)

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[1] 2005 (1) ALD 181

[2] (*2004)2 SCC 476=AIR 2004 S.C. 1442.*

[3] *(2002) 5 ALT 410 (D B)*

[4] *(1999) 5 ALT 516*